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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re GABRIEL Q., a Person Coming Under the Juvenile Court Law.

B292357

LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,
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(Los Angeles
County Super. Ct.
No. 18LJJP00189)

Plaintiff and Respondent,

v.

M.R.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Steven E. Ipson, Juvenile Court Referee. Affirmed.

Julie E. Braden, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, Jacklyn K. Louie, Deputy County Counsel, for Plaintiff and Respondent.

M.R. (Mother) appeals the juvenile court's orders asserting dependency jurisdiction over her son, Gabriel Q., and removing him from her custody. Mother contends there was insufficient evidence to support the challenged orders. We affirm.

FACTS

Mother has two children, Alexis S. and Gabriel. Gabriel's father is A.Q. (Father). At the time of the current proceedings, 11-year-old Gabriel lived with Mother at the maternal grandmother's house and 15-year-old Alexis lived with her father.

Between 2003 and 2016, this family was referred to the Los Angeles County Department of Children and Family Services (DCFS) four times. Two referrals were substantiated. In 2003, allegations of physical abuse against Alexis were substantiated when Mother could not explain a fracture on Alexis's left leg. In 2016, Alexis reported physical and emotional abuse by Mother. She reported Mother hit her and pulled her hair repeatedly. Mother also threw her in the shower with her clothes on. Alexis reported Mother hit Gabriel in the nose. The social worker observed Mother and Alexis appeared to engage in inappropriate verbal and physical altercations. During these proceedings, Mother tested positive for methamphetamine and marijuana. The case was closed after Alexis went to live with her father and there were no additional concerns for the children's safety.

Father has a lengthy criminal history, including felony convictions for possession of controlled substances. On February 16, 2018, the Los Angeles Police Department executed a warrant to search Father's home. When officers instructed the building's occupants to exit the building, they observed Father exiting from a basement apartment, where officers found glass pipes containing methamphetamine residue and a scale. Officers also

found baggies of methamphetamine in an adjacent basement apartment, and an unsecured firearm and \$13,000 in cash in the apartment above the basement, which was occupied by the paternal uncle.

Because Gabriel spent weekends at Father's home, DCFS was contacted as part of a multi-agency response team action. DCFS filed a petition pursuant to Welfare and Institutions Code section 300,¹ subdivision (b), alleging Gabriel was at risk of harm due to Father's history of drug use and possession of drug and drug paraphernalia in the home he shared with Gabriel. The petition also alleged Mother failed to protect Gabriel from Father's conduct.

Mother reported she suspected Father had been using drugs during the past two months because Father was not home when she dropped Gabriel off with the paternal grandparents or paternal aunt. He would also make and cancel plans with Gabriel. Father admitted he used methamphetamine every other week when Gabriel was not with him. Mother agreed to disallow Gabriel from visiting with Father now that she knew of his drug use. Gabriel was removed from Father's custody and released to Mother. The criminal case against Father arising from the search was dismissed for lack of evidence on February 21, 2018. However, Father was again arrested on March 23 for choking and punching his tenant because the tenant refused to buy cigarettes for him.

The petition was amended on April 11, 2018, to allege that Mother's substance abuse rendered her unable to adequately care for Gabriel. The juvenile court dismissed the original petition

¹ All further section references are to the Welfare and Institutions Code.

and granted the filing of the amended petition. The additional allegation against Mother stemmed from her positive drug test for amphetamine, methamphetamine, and cannabinoids on March 28, 2018. Mother had previously tested positive for the same three substances on December 21, 2016, during the previous dependency proceeding.

When confronted with her drug test results, Mother admitted she smoked marijuana, but denied ever using methamphetamine. She believed her positive drug test was a result of German diet pills she received from a friend. Nevertheless, Mother acknowledged she had a problem and assured the social workers that she had enrolled at the Tarzana Treatment Center to address it.

As a result of the social workers' concerns about Mother's drug use, Mother consented to allow Gabriel to be detained at his maternal grandmother's home while she moved out. The maternal grandmother agreed to care for Gabriel, but stated she had an out-of-state trip planned to help care for her other grandchildren.

The juvenile court found prima facie evidence to detain Gabriel, who was temporarily living with the paternal aunt, from Mother under the amended petition. The trial court allowed Mother to remain in the maternal grandmother's home, but ordered her to find an alternative residence. Mother was granted nine hours of monitored visitation per week with Gabriel.

From March to August 2018, Mother missed 15 scheduled drug tests. She appeared for one drug test on May 14 and tested negative. Mother was terminated from the drug treatment center in July due to an altercation with another client. She had

not enrolled in another program by the time of the adjudication hearing in August.

At the adjudication hearing on August 28, 2018, DCFS requested the juvenile court sustain all the allegations as pled. Mother and Father both requested the allegations be dismissed. Mother argued DCFS failed to show Mother knew or should have known what was happening at Father's home since they no longer lived together and did not have much contact. Further, there was no showing of a nexus between her use of marijuana or any other substances and a failure to care for Gabriel, who, by all accounts, was doing well.

The juvenile court sustained the allegations as pled and found Gabriel was harmed or was at substantial risk of harm due to Father's and Mother's conduct. The court declared Gabriel a dependent of the court and removed him from the parents' custody. The parents were granted monitored visitation with orders for DCFS to provide reunification services and referrals to a drug program, random testing, parenting classes, and individual counseling. Mother timely appealed.

DISCUSSION

I. Substantial Evidence Supports Jurisdiction Based on Mother's Failure to Protect

Mother contends substantial evidence is lacking to support dependency jurisdiction because her drug use alone does not present a threat to Gabriel's physical safety. Mother does not contest on appeal, however, the juvenile court's finding that she failed to protect Gabriel from Father's drug use and criminal activity. She has thus waived this argument and we may affirm jurisdiction on this ground. (*In re A.C.* (2017) 13 Cal.App.5th 661, 672 [appellant waives her argument when she fails to raise a

point or to support it with reasoned argument and citations to authority].)

Even if there is no waiver, substantial evidence supports the failure to protect finding. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) “When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*Ibid.*)

Here, substantial evidence demonstrates Mother knew or should have known about Father’s possession of drugs and drug paraphernalia, yet continued to allow Gabriel to stay at Father’s home. “ ‘In reviewing the jurisdictional findings and disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.’ [Citations.]” (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

The record demonstrates Mother reported to the social worker she suspected Father had been using drugs due to his unusual behavior. He was not home when she dropped Gabriel off for his weekend visits. She also noticed he would make and cancel plans with Gabriel. She told the social worker, “That’s

how he acts when he's using." Mother's suspicions were correct, as Father admitted he used methamphetamine every other week.

Mother was also on notice that Father's home environment was detrimental to Gabriel's safety due to the criminal activity occurring there. Mother had known Father for at least 11 years, during which time he had multiple arrests and convictions for drug possession and possession of firearms and body armor. Indeed, methamphetamine, drug paraphernalia, and a firearm were found during the search that precipitated the present dependency proceedings. Father's criminal activities presented a dangerous environment for Gabriel. Substantial evidence supports a finding that Mother failed to protect Gabriel.

II. Substantial Evidence Supports the Removal Order

Mother additionally challenges the juvenile court's removal order at disposition, contending no evidence demonstrated that placement with Mother presented a substantial danger to Gabriel's physical well-being. We disagree and find substantial evidence supports the removal order.

Under section 361, subdivision (c)(1), a dependent child may not be removed from the custody of his parent with whom he had been residing unless the juvenile court finds clear and convincing evidence of a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being, and there are no reasonable means for protecting the child other than removal. "The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child." (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) In determining whether a child may safely remain in the parent's custody, the juvenile court may consider the parent's past

conduct and current circumstances, and the parent's response to the conditions that gave rise to juvenile court intervention.

(Ibid.)

Moreover, the Legislature has declared, "The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment." (§ 300.2.)

On appeal, we consider whether substantial evidence supports a dispositional order removing a child from a parent's custody.

(In re Ashly F. (2014) 225 Cal.App.4th 803, 809.)

Mother asserts there was no evidence of substance abuse to support Gabriel's removal from her custody. According to Mother, neither parent was observed to be under the influence of drugs at any time during the proceedings. Moreover, neither Gabriel nor his sister had seen Mother or Father use drugs, despite being taught about it in school. They instead reported feeling safe with Mother. Indeed, no one expressed concern about drug use or about Mother's parenting. Instead, Mother's home was found to be appropriate for Gabriel. We are not persuaded by Mother's selective recitation of the record.

Contrary to Mother's assertion that one positive drug test does not make her a substance abuser, there was ample evidence of prolonged drug use. Mother admitted to the social worker that she smoked marijuana, and that she had a problem with drugs. She also tested positive for methamphetamine twice; in March 2018, during these current proceedings, and in 2016, when she acted violently towards Alexis and Gabriel, resulting in a prior dependency proceeding. Despite these positive test results,

Mother denied she ever took methamphetamine. Instead, Mother asserts unnamed German diet pills were the reason behind her positive test result for methamphetamine in 2018. The juvenile court could reasonably have disbelieved this excuse, particularly as it does not explain the positive test result in 2016.

Additionally, Mother failed to appear for 15 drug tests from March to August of 2018, ignoring orders by the juvenile court to submit to drug testing. In assessing the degree of the parent's substance abuse problem and the risk to the child, a missed drug test, without adequate justification, may properly be considered the equivalent of a positive test result. (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1303.) Mother excuses her failure to test by claiming her work schedule prevented her from taking any of the tests over a period of five months. "[T]he juvenile court could reasonably conclude that common sense suggests a parent who consistently fails to appear for drug tests does so because of a consciousness of guilt." (*Id.* at p. 1304.)

The record shows Mother's drug use is not limited to a one-time positive drug test. The record also shows Mother failed to enroll in another drug treatment program when she was terminated from the Tarzana Treatment Center despite an admitted problem with drugs, and she acted violently towards Alexis and Gabriel when she previously tested positive for methamphetamine and marijuana. This is substantial evidence to support a removal order.

Notwithstanding this substantial evidence, Mother argues the juvenile court abused its discretion when it improperly used custody of Gabriel as a "bargaining chip" to ensure Mother resume testing and remain in treatment. Mother asserts the juvenile court was "irritated" with her failure to test and pursue

drug treatment and thus decided to punish her by removing Gabriel from her custody.

The record does not corroborate Mother's hypothesis. At the disposition hearing, Mother requested Gabriel be returned to her custody or alternatively, she be allowed to move back into the maternal grandmother's home if she resumed drug testing and tested negative. (Her counsel emphasized that she was homeless.) The juvenile court declined to issue a self-executing order to allow Mother to return to the maternal grandmother's home. Its comments about Mother's failure to drug test were made in connection with her request to move back to the maternal grandmother's home, not to regain custody of Gabriel. This argument is without merit.

In any case, "we review the lower court's ruling, not its reasoning; we may affirm that ruling if it was correct on any ground." (*In re Natasha A.* (1996) 42 Cal.App.4th 28, 38.) As we discussed above, substantial evidence supports the court's removal order.

Mother also asserts the juvenile court should have explored alternatives to removal, yet she failed to make this argument below and failed to identify what alternatives it should have considered on appeal. We treat this argument as waived.

DISPOSITION

The challenged jurisdictional findings and dispositional orders are affirmed.

BIGELOW, P. J.

We concur:

GRIMES, J.

WILEY, J.